

300024

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208

ROBERT A. WIMBISH  
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ENTERED  
Office of Proceedings  
November 22, 2019  
Part of  
Public Record

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November 22, 2019

## VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20006

Re: **Docket No. FD 36364**  
**Decatur & Eastern Illinois Railroad, L.L.C. –**  
**Acquisition and Change of Operator Exemption –**  
**NRG, Inc., and Eastern Illinois Railroad Company**

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is an acquisition and change of operator notice of exemption of the **Decatur and Eastern Illinois Railroad, L.L.C.**, filed pursuant to 49 C.F.R. part 1150, subpart E. Payment of the applicable filing fee of \$2,100.00 has been tendered electronically with this filing via Pay.gov.

If you have any questions regarding this filing, please contact me at either [rwimbish@fletcher-sippel.com](mailto:rwimbish@fletcher-sippel.com) or (312) 252-1504. Thank you for your assistance on this matter.  
Kind regards.

Respectfully submitted,



Robert A. Wimbish  
Attorney for Decatur & Eastern Illinois  
Railroad, L.L.C.

Enclosure

FEE RECEIVED  
November 22, 2019  
SURFACE  
TRANSPORTATION BOARD

FILED  
November 22, 2019  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36364

DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
— ACQUISITION AND CHANGE OF OPERATOR EXEMPTION —  
NRG, INC., AND EASTERN ILLINOIS RAILROAD COMPANY

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**VERIFIED NOTICE OF EXEMPTION OF  
DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Robert A. Wimbish  
Bradon J. Smith  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208  
(312) 252-1500

**ATTORNEYS FOR DECATUR & EASTERN  
ILLINOIS RAILROAD, L.L.C.**

Dated: November 22, 2019

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36364

DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
— ACQUISITION AND CHANGE OF OPERATOR EXEMPTION —  
NRG, INC., AND EASTERN ILLINOIS RAILROAD

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**VERIFIED NOTICE OF EXEMPTION OF  
DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Pursuant to 49 C.F.R. part 1150, subpart E, Decatur & Eastern Illinois Railroad, L.L.C. (“DREI”), a Class III rail carrier,<sup>1</sup> hereby files this Verified Notice of Exemption (the “Notice”) to acquire a roughly 53-mile line of railroad (the “Line”) owned by NRG, Inc. (“NRG”), and to replace NRG’s subsidiary, the Eastern Illinois Railroad Company (“EIRC”), as operator of the Line as described more fully below.

In accordance with the requirements of 49 C.F.R. § 1150.43, DREI submits the following information:

**Name and Address of Applicant: 49 C.F.R. § 1150.43(a)**

The full name and address of the applicant is as follows:

Decatur & Eastern Illinois Railroad, L.L.C.  
315 W. Third Street  
Pittsburg, KS 66782

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<sup>1</sup> See Decatur & Eastern Illinois Railroad, LLC – Acquisition Exemption Containing Interchange Commitment – CSX Transportation, Inc., Docket No. FD 36206 (STB served Aug. 24, 2018) (“DREI-Notice”).

**Applicant's Representative: 49 C.F.R. § 1150.43(b)**

DREI's representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606  
(312) 252-1500

**Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)**

DREI, NRG and EIRC are in the process of completing terms of an Agreement for Sale and Purchase of Business Assets (the "Agreement")<sup>2</sup> pursuant to which ownership of the Line will transfer from NRG to DREI, and DREI will replace the incumbent operator, EIRC. As a party to the Agreement, EIRC has consented to the proposed change in operator. In keeping with applicable law, the Agreement provides that the proposed transaction may not be consummated absent advance Board authorization. For reasons discussed below, DREI understands that the requisite exemption authority from the Board will not become effective until December 31, 2019, and the parties have agreed for various reasons that it is important that DREI consummate the transaction on that date.

**Operator of the Property: 49 C.F.R. § 1150.43(d)**

DREI will operate and provide all rail common carrier service to shippers on the Line.

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<sup>2</sup> NRG is the owner of the Line, having acquired it from the Norfolk and Western Railway Company ("N&W") in 1988 as abandoned track assets. It appears that NRG subsequently formed EIRC to assume common carrier operations over the Line. See Eastern Illinois Railroad Company – Operation Exemption – Line of Railroad of NRG, Inc., in Edgar, Coles, Cumberland, and Douglas Counties, IL, Docket No. FD 31860 (ICC decided Jun. 20, 1991) ("EIRC-Notice").

**Background and Summary of the Transaction: 49 C.F.R. § 1150.43(e)**

As is reflected in EIRC-Notice, the Board's predecessor regulatory agency, the Interstate Commerce Commission ("ICC"), authorized EIRC to assume common carrier operations over the NRG-owned Line in 1991. The Line is described in EIRC-Notice as a "52.95-mile line of railroad in Edgar, Coles, Cumberland, and Douglas Counties, Illinois . . . extending between Metcalf and Neoga, IL." EIRC-Notice indicates that the Line was the subject of a prior railroad line abandonment proceeding dating back to 1987, under which N&W abandoned, and subsequently (in 1988) sold the assets that comprise the Line to NRG, EIRC's corporate parent.

DREI understands that NRG has never held itself out to provide common carrier service over the Line, and DREI approaches this transaction with the understanding that, while EIRC is a federally-regulated railroad common carrier, NRG never became a rail carrier, and is not now one. The Line that DREI proposes to purchase from NRG and over which it will replace EIRC as operator consists of approximately 53 route miles of railroad. The Line extends from milepost 286.0 near Metcalf, Illinois, to approximately milepost 338.95 (east of Oak Avenue) in Neoga, Illinois.

The name and address of the transferor entities is as follows:

NRG, Inc.  
Eastern Illinois Railroad Company  
c/o Archer Daniels Midland Company  
4666 Faries Parkway  
Decatur, IL 62525

**Map: 49 C.F.R. § 1150.43(f)**

A Map depicting the Line is attached as Exhibit A.

**Certificate of Compliance: 49 C.F.R. § 1150.43(g)**

The projected revenues of DREI as a consequence of this transaction will not result in DREI becoming a Class I or II rail carrier. Certification to this effect is made with the verification of this Notice.

**Interchange Commitments: 49 C.F.R. § 1150.43(h)**

DREI hereby certifies that the subject transaction does not include an interchange commitment.<sup>3</sup>

**Shipper Notice: 49 C.F.R. § 1150.42(b)**

Because this transaction involves, among other things, a change in operator from EIRC to DREI, the applicable regulations require that notice of the transaction be given to shippers. DREI will comply with this notice requirement by notifying shippers on the Line in writing as of the date of this filing, and will include with such written notification a copy of this Notice. See Exhibit B (list of shippers notified and sample notice letter).

**Advance Notice: 49 C.F.R. § 1150.42(e)**

DREI's annual revenues exceed, and are expected to continue to exceed, \$5 million. Accordingly, DREI arranged for EIRC to post notice of the proposed transaction in the workplace of EIRC employees, and DREI has certified as to the accomplishment of such posting in compliance with the requirements of 49 C.F.R. § 1150.42(e) (the "Labor Notice") on November 1, 2019, as the record in this proceeding reflects. DREI has been advised that no

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<sup>3</sup> The transaction under which DREI originally became a common carrier involved interchange commitments in favor of the seller. See DREI-Notice. However, DREI has been able to ascertain, and is now advising the Board, that the interchange restrictions applicable to the railroad lines covered by DREI-Notice will not extend to traffic originating or terminating on the Line that is the subject of the present transaction. Furthermore, for purposes of additional clarity, the Agreement imposes no interchange commitments upon DREI.

EIRC employees are represented by a labor union, and, for that reason, the labor union service of notice requirements at section 1150.42(e) are inapplicable. DREI understands that NRG is a non-carrier owner of the Line assets, and does not have employees that conduct rail operations on the Line. EIRC alone is the current railroad service provider.

The class exemption cannot take effect until 60 days from the date that DREI certified its compliance with the advance notice requirements of section 1150.42(e) – November 1, 2019. DREI understands that this class exemption notice will take effect as of December 31, 2019, and it is critically important to the parties that it be consummated on that date.

**Environmental and Historic Preservation Data: 49 C.F.R. § 1105**

Under 49 C.F.R. § 1105.6(c)(2), the subject Line sale and change of operators transaction is exempt from environmental reporting requirements. The transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed Line sale and change of operator transaction is also exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Additional Board approval would be required to discontinue service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 C.F.R. § 1150.42(a)**

A caption summary in appropriate form is attached as Exhibit C to this Notice.

Respectfully submitted,

By: R. A. Zimlich

Robert A. Wimbish

Bradon J. Smith

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR DECATUR AND EASTERN  
ILLINOIS RAILROAD, L.L.C**

Dated: November 22, 2019

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. FD 36364**

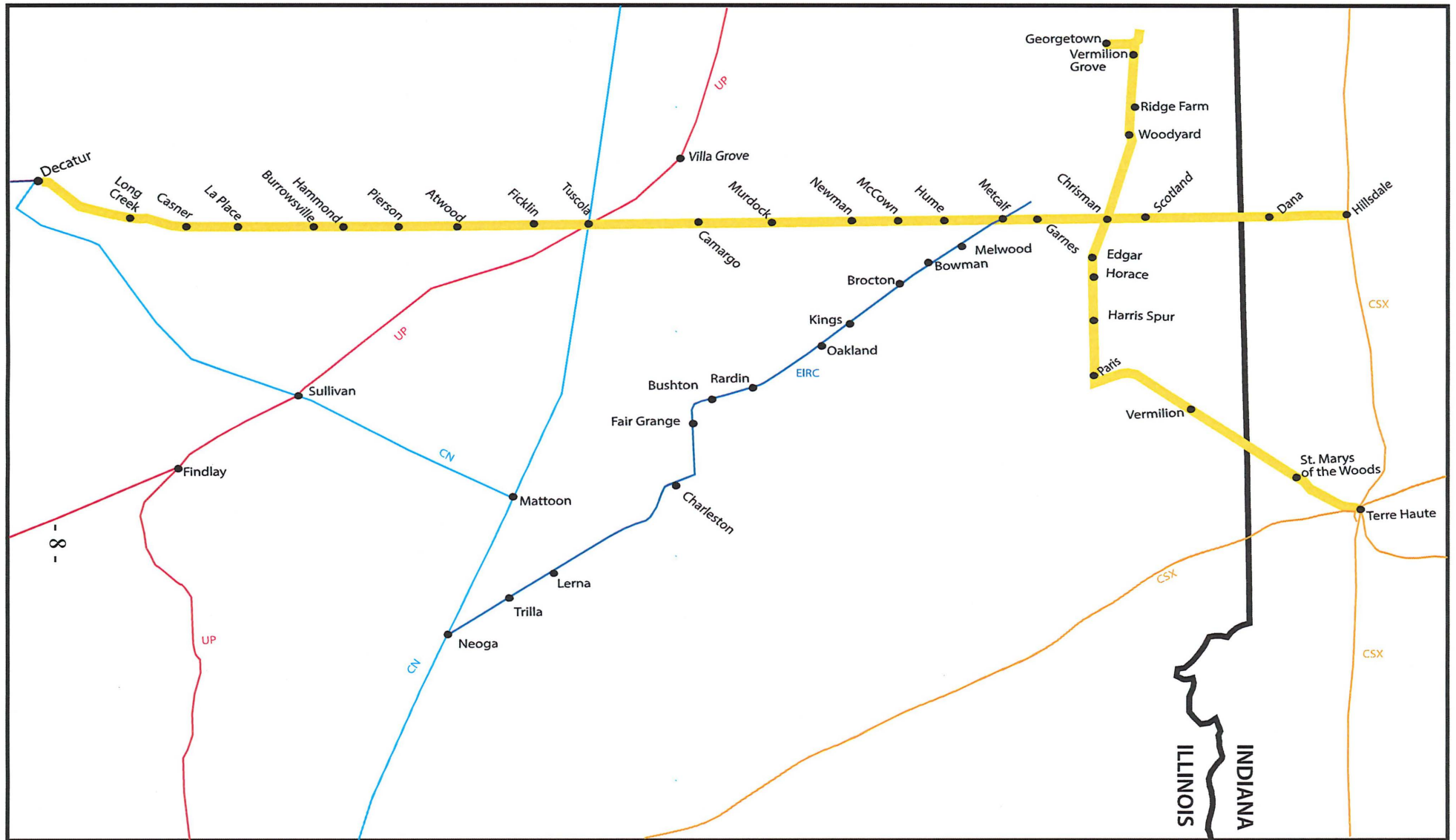
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**DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
-- ACQUISITION AND CHANGE OF OPERATOR EXEMPTION --  
NRG, INC., AND EASTERN ILLINOIS RAILROAD COMPANY**

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**EXHIBIT A**

**MAP**



| LEGEND:                           |        |
|-----------------------------------|--------|
| Decatur & Eastern Illinois (DREI) | Yellow |
| EIRC (to be purchased by DREI)    | Blue   |
| Union Pacific                     | Red    |
| Canadian National                 | Green  |
| CSX                               | Orange |
| NS                                | Purple |

| Interchanges - Track miles - 126      |            |
|---------------------------------------|------------|
| CN - Decatur, IL                      | Blue       |
| CSX - Terre Haute, IN & Hillsdale, IN | Orange     |
| UP - Tuscola, IL                      | Red        |
| NS - Decatur, IL                      | Purple     |
| EIRC - Metcalf, IL                    | Light blue |

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. FD 36364**

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**DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
-- ACQUISITION AND CHANGE OF OPERATOR EXEMPTION --  
NRG, INC., AND EASTERN ILLINOIS RAILROAD COMPANY**

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**EXHIBIT B**

**EVIDENCE OF NOTICE TO CUSTOMERS**

## LIST OF SHIPPERS

Kim Holsapple  
Manager  
Total Grain Marketing, Neoga, IL  
405 S. Banker St.  
Effingham, IL 62401

Mike Davis  
Supervisor  
Ox Engineered Products  
1255 N. 5<sup>th</sup> St.  
Charleston, IL 61920

Mike Hardy  
Supervisor  
Hi-Cone  
1155 N. 5<sup>th</sup> St.  
Charleston, IL 61920

Mike Kessler  
Manager  
Kirchner Lumber  
1 6<sup>th</sup> St.  
Charleston, IL 61920

Tyler Bennett  
Manager  
Lester Building  
750 W. State St.  
Charleston, IL 61920

ADM  
4666 East Faries Parkway  
Decatur, IL 62526

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

November 22, 2019

ROBERT A. WIMBISH  
(312) 252-1504  
rwimbish@fletcher-sippel.com

ADM  
4666 East Faries Parkway  
Decatur, IL 62526

Re: **Docket No. FD 36364**  
**Decatur & Eastern Illinois Railroad, L.L.C. — Acquisition and Change of**  
**Operator Exemption — NRG, Inc., and Eastern Illinois Railroad Company**

To Whom it May Concern:

Decatur & Eastern Illinois Railroad, L.L.C. (“DREI”), an existing Class III railroad, has filed a Notice of Exemption (the “Notice”) with the Surface Transportation Board (“STB”) to purchase a line of railroad owned by NRG, Inc. (“NRG”), extending between milepost 286.0 near Metcalf, Illinois, to approximately milepost 338.95 (east of Oak Avenue) in Neoga, Illinois, and to replace NRG’s corporate subsidiary, Eastern Illinois Railroad Company, as the common carrier rail service provider on that line. The parties intend to consummate the proposed line sale and change of rail operators upon the anticipated effective date of the Notice – December 31, 2019.

DREI is providing you with this information in keeping with the STB’s shipper notice requirements at 49 C.F.R. § 1150.42(b). You are not required to respond or to this letter or otherwise participate in the STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,



Robert A. Wimbish  
Attorney for Decatur & Eastern Illinois  
Railroad, L.L.C.

RAW/ah  
Enclosure

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. FD 36364**

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**DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
-- ACQUISITION AND CHANGE OF OPERATOR EXEMPTION --  
NRG, INC., AND EASTERN ILLINOIS RAILROAD COMPANY**

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**EXHIBIT C**

**CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

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DOCKET NO. FD 36364

DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
— ACQUISITION AND CHANGE OF OPERATOR EXEMPTION —  
NRG, INC., AND EASTERN ILLINOIS RAILROAD

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Decatur & Eastern Illinois Railroad, L.L.C., (“DREI”), a Class III carrier, has filed a notice of exemption (the “Notice”) to – (1) purchase from NRG, Inc. (“NRG”) an approximately 53-mile of railroad (the “Line”) extending from milepost 286.0 near Metcalf, Illinois, to approximately milepost 338.95 (east of Oak Avenue) in Neoga, Illinois, and (2) replace NRG’s corporate subsidiary, Eastern Illinois Railroad Company, as the provider of common carrier service on the Line.

Comments must be filed with the Board and served on:

Robert A. Wimbish  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606  
(312) 252-1500

The notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. FD 36364**

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**DECATUR & EASTERN ILLINOIS RAILROAD, L.L.C.  
-- ACQUISITION AND CHANGE OF OPERATOR EXEMPTION --  
NRG, INC., AND EASTERN ILLINOIS RAILROAD COMPANY**

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**CERTIFICATION AND VERIFICATION**

**CERTIFICATION AND VERIFICATION**

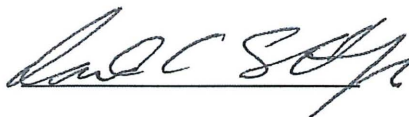
STATE OF KANSAS                    )  
                                              ) ss  
COUNTY OF CRAWFORD         )

Dan C. Smith, Jr., Chief Executive Officer, Decatur & Eastern Illinois Railroad, L.L.C.

("DREI"), being duly sworn, deposes and says:

1. I am the Chief Executive Officer of DREI.
2. DREI is not now a Class I or II rail common carrier, and the annual revenues of DREI will not result in DREI becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I am qualified and authorized to tender this Verification and Certification and file the subject Notice of Exemption.
4. I have read the foregoing Notice of Exemption and know that the facts stated herein are true.

Dated: November 22, 2019



Subscribed and sworn to before me  
this 21 day of November, 2019.

  
\_\_\_\_\_  
Notary Public

